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27 June 1957

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MEMORANDUM FOR: Comptroller

SUBJECT: Home Service Transfer Allowance

1. You have requested our opinion whether you may legally certify for payment claims for the transfer portion of the home service transfer allowance under the following circumstances.

2. Husband and wife, both staff employees, stationed at the same overseas post are transferred to the United States (from Zone 3 to Zone 2) on PCS orders at the same time. The employees have two children. Employee-husband submits a claim for the maximum entitlement at the with-family rate, listing the two children as dependents, employee-wife claims payment at the without-family rate. You note that the Standardized Regulations (Government Civilian Foreign Areas) at section 252 dealing with home service transfer allowances is silent as regards the entitlement of married employees.

3. Section 252 of the Standardized Regulations issued by the Secretary of State pursuant to the authority conferred by Executive Order 10011, dated 22 October 1948, indicates that upon an employee's reassignment involving transfer from a post in the foreign area to a post in the continental United States, payment of the transfer portion of the home service transfer allowance may be made. Executive Order 10100, dated 20 June 1949, authorizes the Director of Central Intelligence to pay allowances conforming to those granted by the Secretary of State in accordance with the regulations prescribed by him in Executive Order 10011 and to prescribe such further regulations as he may deem necessary to effectuate the purposes of the Order. In Agency [redacted] which incorporates by reference and supplements section 252, the criteria and eligibility requirements for this payment are further prescribed. And in the matter of allowances generally, the Standardized Regulations define

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"employee" as "any civilian employee of the Government who is a citizen of the United States stationed in a foreign area" (section 215b). Together, these regulatory issuances set forth with a certain degree of particularity the conditions under which transfer payments may be made, although admittedly not covering in specific language the issue with which we are concerned here.

4. In view of this silence we must interpret the Regulation in the light of the spirit of the Regulation and the intent of Congress and the principles covering the expenditure of Government funds. The basic authority for home transfer allowance is permissive and is not payment to which an employee is entitled as a matter of right. The

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Agency [redacted] provides that it shall be paid to "eligible" staff personnel provided in paragraph 4 a. and paragraph 3.b. requires that all applicable eligibility criteria be met. By definition, paragraph 2 a. reads that the allowances are granted to an employee for "extraordinary and necessary expenses deemed incident to the establishment of his residence at a PCS post ..." Limitations have then been set on the amounts which can be paid to a single employee, an employee with one member of a family and an employee with more than one member of a family.

5. In the present case, the employee-husband claimed the maximum amount on the basis of two members of the family. It would appear to be quite contrary to the spirit of the Regulation to give that same family payments in excess of this maximum amount because of the fact that the wife too was an employee since the fact of her employment adds nothing to the extraordinary or necessary expenses incidental to the establishment of the husband's post. Under these circumstances the wife does not meet the eligibility criteria as an employee and is not entitled to the allowance.

6. We believe that an analysis of the intent of Congress would lead to the same conclusion. Basic authority is in section 901 (2) (ii) of the Foreign Service Act passed in the 1st Session of the 84th Congress in 1955. The legislative history indicates the allowance was authorized to assist employees in meeting the out-of-pocket expenses that result from the mobile nature of their employment. We do not feel that Congress intended to grant to one family a greater allowance because the wife happened to be employed than that given to the same size family where the wife was not employed particularly as the first family would already have the financial benefit derived from the wife's Government salary

and no additional expenses need be incurred.

7. As a matter of further incidental interest, we would point out that Congress has been closely following the granting of transfer allowances by the Department of State. As a result, the Department was instructed through the medium of the Conference Report on its 1958 Appropriation Bill to restrict expenditures for transfer allowances to a sum which is but a small fraction of that expended in the previous year. Because of the Congressionally imposed restriction, intra-zone transfer allowances were eliminated effective 1 May 1957 and inter-zone transfer allowances reduced.

8. Based on the foregoing, it is our opinion that it would not be proper to certify the wife's claim for payment. In addition, in light of the basic principles governing expenditure of funds, a claim based on a technicality which takes advantage of silence or ambiguity in a regulation and which would obtain for one employee financial benefit not available to other employees in the same financial status, is unconscionable and should not be countenanced.

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General Counsel